

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ARLYN J. EASTMAN, Personal  
Representative of the Estate of the  
Deceased, and LINO LOWELL  
SPOTTED ELK JR., Deceased,

Plaintiffs,

v.

COUNTY OF SHERIDAN, a Nebraska  
Political Subdivision, LEVI MCKILLET,  
in his Individual and Official Capacity,  
and DOES 1-5, in Their Individual and  
Official Capacities,

Defendants.

7:07CV5004

ORDER

Before the court is the motion to dismiss, Filing No. 46, filed by the defendants in this case. Defendants filed this motion requesting that the court dismiss the second amended complaint or to require plaintiffs to make the complaint more definite and certain. Thereafter, plaintiffs moved to file a third amended complaint and the court granted this request. Filing Nos. 55 and 58. The defendants have now filed a motion to strike or dismiss the third amended complaint, Filing No. 59, but that motion is not yet ripe. Accordingly, the court will dismiss the motion to dismiss, Filing No. 46, as moot.

THEREFORE, IT IS ORDERED that defendants' motion to dismiss, Filing No. 46, is denied as moot.

DATED this 28<sup>th</sup> day of November, 2007.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge